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ELECTRONICALLY FILED
DOC #:
DATE FILED: August 12, 2009

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
RAYMOND BEALS,

Petitioner,

- against -

ACTING SUPT. DEP. FARRELL,

Respondent.
-----X

07 Civ. 4540 (PAC) (RLE)

ORDER

HONORABLE PAUL A. CROTTY, United States District Judge:

Pro se Petitioner Raymond Beals petitions for a writ of habeas corpus from his October 4, 2002 conviction in New York Supreme Court, New York County, for robbery and assault in the second degree. Beals contends that his incarceration violates the United States Constitution because his sentence of seven years imprisonment and five years supervised release exceeds the seven-year sentence he claims to have been promised in exchange for pleading guilty. He further argues that the trial court incorrectly held that he was entitled to vacate his guilty plea but precluded from modifying it.

On August 4, 2008, Magistrate Judge Ronald L. Ellis issued a Report & Recommendation ("R&R") recommending that Beals' petition be denied. Magistrate Judge Ellis found that under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2244(d)(1), a petitioner must file an application for a writ of habeas corpus within one year of his conviction becoming final. (R&R at 3.) Beals' petition was untimely because it was filed on March 1, 2007, nearly three years after his conviction became final on July 19, 2004. (Id.) Moreover, Magistrate Judge Ellis determined that Beals' April 2006 motion to vacate or

modify his sentence did not toll the AEDPA statute of limitations period because (1) that motion was also filed more than one year after Beals' conviction became final; and (2) Beals failed to demonstrate any extraordinary circumstances that would entitle him to equitable tolling. (Id. at 4.)

Pursuant to Rule 72 of the Federal Rules of Civil Procedure, Magistrate Judge Ellis provided the parties with ten days from the service of the R&R during which to file written objections, and advised them that "[f]ailure to file timely objections shall constitute a waiver of those objections both in the District Court and on later appeal to the United States Court of Appeals." (Id. at 5.)

Neither party has filed objections. "To accept the report and recommendations of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003).

Upon review, the Court finds no clear error in Magistrate Judge Ellis' R&R. Accordingly, the Court adopts the R&R in its entirety and Beals' petition is DENIED. Pursuant to 28 U.S.C. § 1915(a)(3), I find that any appeal from this order would not be taken in good faith. Beals did not file objections to the R&R, as he was required to do in order to preserve his right to appeal. The Clerk of the Court is directed to close this matter.

Dated: New York, New York
August 12, 2009

SO ORDERED



PAUL A. CROTTY
United States District Judge

Copies to: Honorable Ronald L. Ellis
United States Magistrate Judge

Mr. Raymond Beals
108 Miles Avenue
Staten Island, NY 10308

Jennifer L. Johnson, Esq.
Assistant Attorney General
Office of the Attorney General, State of New York
120 Broadway
New York, NY 10271